



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R01-OAR-2014-0796; FRL-9921-75-Region 1]**

**Approval and Promulgation of Air Quality Implementation  
Plans; New Hampshire;  
Prevention of Significant Deterioration Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on November 15, 2012. The submittal proposes to ensure that the State PSD program is consistent with the Final New Source Review (NSR) Improvement Rule issued on December 31, 2002; the Final Rule Governing the Implementation of NSR for Fine Particulate Matter issued on May 16, 2008; and the Final Rule to Establish Increments, Significant Impact Levels (SILs) and a Significant Monitoring Concentration (SMC) issued on October 20, 2010. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R01-OAR-2014-0796 by one of the following methods:

1. **www.regulations.gov**: Follow the on-line instructions for submitting comments.

2. E-mail: [mcdonnell.ida@epa.gov](mailto:mcdonnell.ida@epa.gov)
3. Fax: (617) 918-0653
4. Mail: "Docket Identification Number EPA-R01-OAR-2014-0796", Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912.
5. Hand Delivery or Courier. Deliver your comments to: Ida McDonnell, Manager, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics and Indoor Programs Unit, 5 Post Office Square - Suite 100, (mail code OEP05-2), Boston, MA 02109 - 3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R01-OAR-2014-0796. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov), or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your

e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Air Permits, Toxics and Indoor Programs Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

In addition, copies of the state submittal and EPA's proposed approval and technical support document are also available for public inspection during normal business hours, by appointment

at the Air Resources Division, New Hampshire Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.

**FOR FURTHER INFORMATION CONTACT:** Brendan McCahill, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square - Suite 100, (mail code OEP05-2), Boston, MA 02109 - 3912, telephone number (617) 918-1652, Fax number (617) 918-0652, email [mccahill.brendan@EPA.GOV](mailto:mccahill.brendan@EPA.GOV).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

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## **I. What Action is EPA Proposing in this Document?**

On November 15, 2012, the New Hampshire Department of Environmental Services (NH DES) submitted a proposed SIP revision establishing the State’s PSD Program under PART Env-A 619, “Prevention of Significant Deterioration.” The revision incorporated by reference into state law, at PART Env-A 619, the federal PSD Program codified in the July 1, 2011 edition of 40 CFR 52.21, and the State requested that EPA approve the revision into the State’s SIP-approved PSD Program. The State’s PSD Program includes provisions to implement the December 31,

2002 Final NSR Improvement Rules (67 FR 80185), the May 16, 2008 Final Rules Governing the Implementation of NSR for Fine Particulate Matter (73 FR 28321), and the October 20, 2010 Final Rule to Establish Increments, SILs and SMC for Fine Particulate Matter (75 FR 64863). The State's PSD program also includes provisions EPA first approved on October 28, 2002 (67 FR 65710) and that continue to apply.

After reviewing the submittal, EPA proposes to approve the NH DES's November 15, 2012 submittal to establish PART Env-A 619 "Prevention of Significant Deterioration" into the SIP. PART Env-A 619 will supersede all other versions of the PSD program currently approved in New Hampshire's SIP. EPA's proposed approval is contingent on a letter dated December 9, 2014 from NH DES. As described in the letter, the November 15, 2012 submittal establishes an SMC level for PM<sub>2.5</sub>. SMC is a screening tool used to determine if a source must submit pre-construction air quality monitoring data prior to constructing or modifying a facility. The U.S. Court of Appeals for the District of Columbia vacated provisions promulgated as part of the October 20, 2010 rule to add PM<sub>2.5</sub> SMCs to SIP-approved PSD programs. On December 9, 2013 (78 FR 73698), EPA issued a Final Rule that revised the existing PM<sub>2.5</sub> SMC listed in sections 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c) to zero micrograms per cubic meter (0 ug/m<sup>3</sup>). The December 9, 2014 letter amends the NH DES request that EPA approve the November 15, 2012 SIP submittal consistent with the Court's decision. The NH DES now considers the SIP submittal to include a PM<sub>2.5</sub> SMC of 0 ug/m<sup>3</sup> and by the December 9, 2014 letter, confirms that it will not apply the PM<sub>2.5</sub> SMC of 4 ug/m<sup>3</sup> to any pending or future PSD permit actions.

## **II. What is the Background for New Hampshire's November 15, 2012 SIP submittal?**

New Hampshire's proposal to adopt the July 1, 2011 edition of 40 CFR 52.21 into its SIP-approved PSD program involves the addition of several major changes made to the State's PSD program since EPA first approved the state's PSD program on October 28, 2002. More details regarding these rule changes are found in the respective final rulemakings and are summarized below.

The November 15, 2012 SIP submittal also retains the major PSD program provisions first approved into the SIP on October 28, 2002 without alteration or revision. These provisions include requirements to apply Best Available Control Technology (BACT) and to conduct an air quality analysis demonstrating any new emission increase does not violate applicable NAAQS or increment.

### *A. What revisions did EPA make in December 31, 2002?*

EPA issued a Final Rule entitled, "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects" (67 FR 80185, December 31, 2002). The rule made a number of changes to the applicability requirements of the Federal PSD Program including the following:

- A new definition of "actual emission baseline" that defines an emission unit's pre-modification actual emissions;

- New “Applicability Procedures” under 40 CFR 51.166(a)(7) that define the test method used to calculate the emission increase from the construction or modification of new or existing emission units;
- The expansion of the “Actual-to-Projected Actual” applicability test to determine if projects at non-Electric Utility Steam Generating Units (non-EUSGU) are major modifications. The pre-2002 federal NSR regulations restricted the Actual-to-Projected Actual applicability test to EUSGUs only;
- New procedures requiring sources to monitor, keep records and report emissions emitted from projects at existing emission units if there is a reasonable possibility (as defined in 40 CFR 51.166(r)(6)) that a project that is not a major modification may result in a significant emission increase; and
- The addition of the optional “Plantwide Applicability Test” (PAL) for all source categories.

The Federal Register (FR) notification for the NSR Improvement rule gave State permitting agencies until January 2, 2006 to submit SIP amendments that implemented the new federal revisions or, if a state permitting agency did not submit any SIP amendments or submitted amendments that differed from the federal rules, a demonstration showing that its existing permitting program or amended permitting program is at least as stringent as EPA’s revised program. In addition, federal regulations governing SIP-approved PSD programs at 40 CFR 51.166 “Prevention of Significant Deterioration of Air Quality” require that all state plans use the specific definitions as promulgated by EPA. Deviations from the federal wording for each definition will be approved only if the State specifically demonstrates that the submitted



definition is more stringent than, or at least as stringent in all respects as, the corresponding federal definition.

The notification for the Final NSR Improvement rule at

[http://www.epa.gov/NSR/fr/20021231\\_80186.pdf](http://www.epa.gov/NSR/fr/20021231_80186.pdf) provides a full description of the NSR

Improvements, the requirements for SIP submittals, and the final amended Federal rule for SIP-approved PSD programs at 40 CFR 51.166 “Prevention of Significant Deterioration of Air Quality.”

*B. What revisions did EPA make in May 16, 2008?*

EPA issued a Final Rule governing the implementation of NSR for PM<sub>2.5</sub>. (73 FR 28321, May 16, 2008). The rule includes the new major source applicability threshold level for major sources of PM<sub>2.5</sub>. A source is defined as a major source and subject to the PM<sub>2.5</sub> PSD requirements if the source is included as one of the specific twenty-eight source categories listed in the current Federal PSD regulations and emits 100 or more tons per year (tpy) of a regulated pollutant or not included on the list and emits 250 or more tpy of a regulated pollutant.

The rule identified the following list of pollutants that contribute to PM<sub>2.5</sub> formation and a description of whether the pollutant as a precursor to PM<sub>2.5</sub> is regulated under the PSD program:

- Direct emissions of PM<sub>2.5</sub> – regulated under the PSD program;
- Sulfur dioxide (SO<sub>2</sub>) – regulated under the PSD program;

- Nitrogen oxides (NO<sub>x</sub>) – regulated under the PSD program unless state demonstrates that NO<sub>x</sub> emissions are not a significant contributor to the formation of PM<sub>2.5</sub> for an area(s) in the state;
- Volatile organic compounds (VOC) – not regulated under the PSD program unless state demonstrates that VOC emissions are a significant contributor to the formation of PM<sub>2.5</sub> for an area(s) in the state; and
- Ammonia – not regulated under the PSD program unless state demonstrates that ammonia emissions are a significant contributor to the formation of PM<sub>2.5</sub> for an area(s) in the state

The rule also identifies the following significant emission rates used to determine if increases in direct emissions of PM<sub>2.5</sub> or increases in PM<sub>2.5</sub> precursors at an existing facility result in major modifications and are subject to the PSD program:

- Direct PM<sub>2.5</sub> emissions - 10 tpy
- SO<sub>2</sub> emissions - 40 tpy
- NO<sub>x</sub> emissions - 40 tpy
- VOC emissions (if regulated) 40 tpy unless the state demonstrates that a lower rate is appropriate.

*C. What revisions did EPA make in October 20, 2010?*

EPA issued a Final Rule to establish Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) for the new PM<sub>2.5</sub> standard. (75 FR 64864, October 20, 2010) This final rule is the mechanism used to estimate significant deterioration of ambient

air quality for a pollutant. An increment is the maximum allowable increase in ambient concentrations of a pollutant in an area. Permitting agencies may not issue a PSD permit if modeled impacts from the new or modified source results in increases above the increment. SILs is a screening tool used to determine whether a proposed source's emissions will have a "significant" impact on air quality in the area. SMC is a screening tool that may be used to determine if a source must submit to the permitting authority 1 year of pre-construction air quality monitoring data prior to constructing or modifying a facility.

This final rule establishes increments, SILs, and an SMC for PM<sub>2.5</sub> to facilitate ambient air quality monitoring and modeling under the PSD regulations for areas designated attainment or unclassifiable for PM<sub>2.5</sub>. This rule together with the May 16, 2008 PM<sub>2.5</sub> rule provides the necessary elements to implement the PM<sub>2.5</sub> program in any area.

### **III. What is EPA's analysis of New Hampshire's proposed SIP revision?**

#### *A. What requirements did EPA use to approve New Hampshire's SIP submittal?*

Section 110(a)(1) of the CAA requires each state to submit to EPA a plan which provides for the implementation, maintenance and enforcement of each NAAQS. These plans, generally referred to as the SIP, include numerous air quality monitoring, emission inventory, and emission control requirements designed to obtain and maintain the NAAQS within the state. The CAA requires states to adopt SIP revisions into the state regulations and to submit the revisions to EPA for approval. Section 110(l) of the CAA states that EPA shall not approve a revision to the SIP if the revision would interfere with any applicable requirement concerning attainment (of the

NAAQS) and reasonable further progress (as defined in CAA section 7501) or any other requirement of the CAA.

In addition, federal regulations governing SIP-approved PSD programs at 40 CFR 51.166 “Prevention of Significant Deterioration of Air Quality” require that all state plans use the specific definitions as promulgated by EPA. Deviations from the federal wording for each definition will be approved only if the state specifically demonstrates that the submitted definition is more stringent, or at least as stringent in all respects, as the corresponding federal definition.

*B. What Provisions did NH DES include in its November 15, 2012 SIP Submittal?*

New Hampshire’s SIP submittal added or revised the following provisions to its PSD Program under Env-A 619 Prevention of Significant Deterioration:

- Env-A 619.01: Purpose
- Env-A 619.02: Applicability
- Env-A 619.03: PSD Program Requirements
- Env-A 619.04: Owner or Operator Obligations
- Env-A 619.05: Permit Application Requirements
- Env-A 619.06: Designation of Class I and Class II Areas
- Env-A 619.07: Department Review and Public Notice
- Env-A 619.08: Increment Consumption

The following is a description of each section.

Env-A 619.01 Purpose defines the purpose of the part to implement the PSD program as set forth in Sections 160 through 169B of the Act and 40 CFR 52.21.

Env-A 619.02 Applicability identifies the sources subject to the state PSD program: new major sources or major modifications of a regulated NSR pollutant located in an area designated as attainment or unclassifiable under 107(d)(1) of the act for the regulated NSR pollutant. The section also allows an owner or operator to demonstrate that the program does not apply to a major source or major modification with respect to a particular pollutant if the source or modification is located in an area designated as nonattainment under 107 of the Act for the particular pollutant.

Env-A 619.03 PSD Program Requirements adopts the specific provisions under the July 1, 2011 edition of 40 CFR 52.21 needed to implement a SIP-approved PSD program that meets the requirements of Title I of the Act. Except for the definition of “Baseline actual emissions,” the NH DES adopted the federal provisions into the state program without revision.

The section includes instructions to replace the term “administrator” used in the 40 CFR 52.21 with the term “department.” The replacement of “administrator” with “department” identifies those federal provisions the NH DES intends to implement. The section also includes instructions to retain the term administrator for a list of provisions adopted into the state PSD program but that cannot be implemented by the NH DES.

Env-A 619.04 Owner or Operator Obligations includes the following requirements:

- the owner or operator of any new major stationary source or major modification subject to Env-A 619 shall comply with BACT; and
- the owner or operator of an existing major stationary source with a Plantwide applicability limit (PAL) shall comply with the provisions of its PAL.

Env-A 619.05 Permit Application Requirements includes references to the state procedures to process permit applications, the information required in applications, specific information for PALs, and procedures for the department to notify federal land managers.

Env-A 619.06 Designation of Class I and class II Areas identifies the Class I and Class II areas in New Hampshire.

Env-A 619.07 Department Review and public notice identifies the requirements to review permit applications, notify and resolve application deficiencies, and schedules for making final determinations in accordance with criteria set forth in Env-A 607.04 and 40 CFR 52.21(j) through (p). Finally, the section identifies the public notice procedures under Env-A 621.04 for permit issuance including the requirement for a 30-day public notice and comment period and permit appeal procedures under the state judicial review regulations.

Env-A 619.08 Increment Consumption requires the state to periodically review pollutant concentration increases over baseline to determine whether ambient air increments have been violated in any PSD area within the state. If a violation is discovered, the NH DES shall submit to EPA a plan for insuring the violation shall be mitigated as soon as possible.

*C. How did the New Hampshire November 15, 2012 SIP submittal meet the new and existing PSD Program requirements?*

With the exception of the revision to the definition of “baseline actual emissions,” the NH DES’s SIP submittal incorporated by reference into State regulations the federal PSD Program definitions and requirements as promulgated under the July 1, 2011 edition of 40 CFR 52.21, without revision. By incorporating the Federal provisions under 40 CFR 52.21 without revision, the state’s proposed SIP revision satisfies the existing SIP-approved PSD program requirements approved on October 28, 2002, the December 31, 2002 NSR Improvement Rule, the May 16, 2008 PM<sub>2.5</sub> NSR Rule and October 20, 2010 PM<sub>2.5</sub> Increment, SMC and SIL Rule.

In EPA’s October 28, 2002 approval of New Hampshire’s state PSD program, New Hampshire’s regulations included public participation and permit appeal procedural requirements that are specific to the State’s permitting programs. The requirements complied with federal procedural requirements including provisions for a public notice and comment period of a minimum of 30 days. These requirements continue to meet federal PSD permit procedural requirements.

EPA’s October 30, 2014 Technical Support Document (TSD) for the proposed approval described in this document includes a complete list of federal provisions adopted into the state PSD program, the corresponding state requirements and a description of how the state provision complies with the federal requirements.

*D. How did NH DES demonstrate that the definition for “Baseline Actual Emissions” is as stringent as the corresponding federal definition?*

1. Description of State and Federal definition for “Baseline Actual Emissions”

The “Baseline actual emissions” definition is used in all major source applicability tests and defines the actual emissions from a source before the project. The difference between the pre-project “actual emission baseline” and the post-project “projected actual emissions” determines the emission increase from a project.

The federal definition of “Baseline actual emissions” at 40 CFR 52.21(b)(48) and 40 CFR 51.166(b)(47) defines separate baseline emissions calculations for existing electric utility steam generating units (EUSGU) and all other existing emission units other than EUSGU as follows:

- Existing EUSGU: The owner/operator may select any consecutive 24-month period for each pollutant without the need for a demonstration within the 5-year period immediately preceding when the owner/operator begins actual construction of the project. The reviewing authority may allow the use of a different time period upon a determination showing the time period is more representative of normal source operations. A different consecutive 24-month period can be used for each regulated pollutant.
- All other existing emission units: The owner/operator may select any consecutive 24-month period in the 10-year period immediately preceding either the date the owner/operator begins actual construction or the date a completed permit application is received by the reviewing authority for a permit required either under this section or under a plan approved by the administrator, whichever is earlier. No other different time



period is allowed. A different consecutive 24-month period can be used for each regulated pollutant.

The NH DES definition tracks the requirements in 40 CFR 52.21(b)(48) except for the following revisions:

- The definition applies to EUSGU and non-EUSGU
- The owner/operator may select a consecutive 24-month period for each pollutant within a 5-year period without the need for a demonstration.
- The department shall allow the use of a different time period up to 10-years preceding the date when the owner/operator begins actual construction upon adequate demonstration by the applicant that it is more representative of normal source operations.
- The same consecutive 24-month period shall be used for each regulated pollutant.
- The department may allow a different consecutive 24-month period for different pollutants upon a determination that the alternative time period is more representative of normal source operations upon adequate demonstration by the applicant that it is more representative of normal source operations.

## 2. Description of Demonstration

As noted in the background section, the federal regulations governing SIP-approved PSD Programs at 40 CFR 51.166 “Prevention of significant deterioration of air quality” require that all state plans use the specific definitions as promulgated by EPA. Deviations from the federal wording for each definition will be approved only if the State specifically demonstrates that the

submitted definition is more stringent, or at least as stringent in all respects, as the corresponding federal definition.

As part of the Final 2002 NSR final rule, EPA prepared a November 21, 2002, “Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules (Supplemental Analysis).” The Supplemental Analysis provided a description of the NSR reform rules and an analysis demonstrating that the reform rule’s environmental benefits were equivalent to or more stringent than the existing pre-reform rules. For the addition of the definition of “Baseline actual emissions,” EPA concluded that the use of a 10 year period to select a baseline is a reasonable period considering the variability of different business cycles. EPA believes the effect from the new definition is small and would not alter the baseline for 90% of the sources. For the remaining 10%, EPA cannot draw general conclusions about how many sources would or would not receive an alternative baseline nor estimate what emission consequences would result. EPA’s complete analysis of the definition of “Baseline Actual Emissions” can be found at <http://www.epa.gov/nsr/documents/nsr-analysis.pdf>.

The NH DES included as part of their SIP submittal a November 16, 2012 memorandum entitled “Supplemental Information for SIP Revision Request Parts of Env-A 600, *Statewide Permit System*.” Similar to the EPA’s study, the memorandum described the difference between the federal and state “Baseline actual emissions” definitions and an emissions study that compares the effects of the state and federal definition on changes to actual sources located in New Hampshire. The NH DES’s analysis looked at the federal definition baseline actual emission, the state’s default baseline actual emission method (i.e., 24 consecutive months selected from the 5

years preceding actual construction for all regulated pollutants), and the state's baseline emission baseline if the owner/operator could demonstrate normal source operations:

- for 24 consecutive months selected from the 5 to 10 year period preceding actual construction, and
- for different 24 consecutive months selected for different regulated pollutants.

For the majority of changes occurring at any type of source, the state's default baseline actual emissions method resulted in the same or lower baseline emissions as compared to the federal definition. For owner/operators that could demonstrate normal source operations for 24 consecutive months selected from the 5 to 10 year period preceding construction and for different regulated pollutants, the results showed that state's definition resulted in baseline emissions that were equivalent in all cases to the federal definition.

EPA concludes the NH DES's definition is as stringent in all respects as the federal definition.

The state definition results in the same emission baseline for new emission units, changes to existing EUSGUs, and changes at existing units that emit one pollutant and with high utilization rates within the last 5 years. For all other changes, the state's definition allows the use of baselines selected outside of 5 years (but before 10-years) and baselines for each regulated pollutant where appropriately demonstrated. As a result, any difference in the application of the state and federal definition on the selection of baseline emissions, if any, would be insignificant and would result in similar PSD applicability decisions, emission limitations or emission control requirements.

**IV. How did New Hampshire's November 15, 2012 SIP submittal comply with the relevant legal decisions issued by the United States Court of Appeals for the District of Columbia and the United States Supreme Court effecting PM<sub>2.5</sub> SMC and Greenhouse Gas requirements, respectively?**

*A. PM<sub>2.5</sub> SMC*

The November 15, 2012 SIP submittal includes requirements to make the State's PSD program comply with the federal PSD program for PM<sub>2.5</sub> NAAQS. After the NH DES submitted the November 2012 proposed PSD SIP revision to EPA, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club v. EPA*, 705 F.3d 458 (2013), vacated the provisions at 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c), relating to PM<sub>2.5</sub> SMC, that were promulgated as part of EPA's 2010 PM<sub>2.5</sub> PSD rulemaking. (75 FR 64864, October 20, 2010). In a letter dated December 9, 2014, the NH DES amended its November 15, 2012 SIP submittal to clarify that the submittal is no longer intended to include the PM<sub>2.5</sub> SMC provisions. In addition, the NH DES letter confirms that it will not apply the PM<sub>2.5</sub> SMC provisions to pending or future PSD permit actions.

*B. Greenhouse Gas Requirements*

The November 15, 2012 submittal includes requirements that had earlier been approved by EPA into the New Hampshire SIP on March 3, 2012, establishing appropriate emission thresholds for determining which new and modified stationary sources are subject to New Hampshire's PSD permitting requirements for their greenhouse gas (GHG) emissions.

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, the EPA is not continuing to apply EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.* 40 CFR 51.166(b)(48)(v)). EPA anticipates a need to revise federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to the EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States District Court for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

In its December 9, 2014 letter, New Hampshire indicated that it will not implement the GHG requirements as to sources that would be subject to the PSD program solely by virtue of their GHG emissions. New Hampshire indicated that it will not treat GHG as a pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. However, consistent with the Supreme Court's June 23, 2014 decision, New Hampshire will be implementing the GHG requirements that apply to sources that are subject to the PSD program requirements by virtue of other regulated pollutants. Once EPA revises its regulations to address the Supreme Court's recent GHG decision, the NH DES will revise its rules and submit the revisions to EPA for approval into the SIP.

#### **V. What action is EPA taking?**

EPA proposes to approve the NH DES's November 15, 2012 proposed SIP revision. The proposed SIP revision, as clarified in a letter dated December 9, 2014 from the NH DES, establishes a state PSD program at Env-A 619, "Prevention of Significant Deterioration" that meets all requirements for a SIP-approved PSD program under 40 CFR 51.166, section 110 of the CAA, and EPA regulations.

#### **VI. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action

merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 31, 2014.

Deborah A Szaro,  
Acting Regional Administrator,  
EPA New England.

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